IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 476 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

ARJANBHAI SAMANTBHAI SOLANKI & 1 - Opponent(s)

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Appearance :
MR UR BHATT, ADDL PP for Appellant
MR DK MODI for Respondent No(s).: 1,2.
MR MD MODI for Respondent No(s).: 1,2.
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CORAM : HON'BLE MR.JUSTICE S.R.BRAHMBHATT

Date : 05/08/2005

ORAL JUDGMENT

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1.The appellant State of Gujarat has preferred this Criminal Appeal against the order of acquittal dated

3.4.1996 passed by the learned Judicial Magistrate First Class, Manavadar in Criminal Case No. 434 of 1993 acquitting the prese nt respondents original accused Nos. 1 and 2 of the charges under Sections 7(1), 7(2), 7(5) and 16 of the Prevention of Food Adulteration Act, 1954 (herein after referred to as 'the Act' for short). This court has granted leave and admitted the appeal vide order dated 11.9.1996.

2. The case of the prosecution in short is that the Food Inspector original complainant on 30.4.1993 at about 10-30 AM visited the shop of the accused situated in Koylana (Ghed) of Manavadar Taluka. In presence of panch witness, he purchased 450 grams of chilly powder (loose) for sending it for analysis. The requisite notice under Rule 12 of the Prevention of Food Adulteration Rules, 1955 (herein after referred to as 'the Rules' for short) in form No. 6 of the Act was issued and the payment for purchase of sample chilly powder was made and the requisite cash memo and receipt were obtained in accordance with law. The panchnama was drawn. The sample chilly powder was divided into three equal parts and collected in dry, orderless, dehumidified glass bottles. The bottles were properly sealed so as to prevent from moisture or other

substance from entering it. After applying the requisite seal, mark and details, they were wrapped and one portion of the sample was sent to Public Analyst for analysis and remaining two portion were sent to the Local Health Authority as required under law. On report received from the Public Analyst indicating that the sample food article was adulterated, necessary sanction for instituting prosecution was obtained from the competent authority and the complaint came to be lodged. As it is submitted, the notice under Section 13 (2) of the Act came to be issued to the accused affording them an opportunity to have the remaining sample tested by the Central Food Laboratory. It is on the record that the sample was also tested by the Central Food Laboratory and the report of the Central Food Laboratory dated 19.11.1993 is also on the record. The learned Magistrate after examining the matter, call upon the accused for recording plea and put to them the charges and recorded their plea of denial. After examining the panch witness and the complainant, the trial Court framed issues mainly (i) Whether the prosecution established beyond doubt that the complainant has purchased 450 grams of chilly powder (loose) on payment of Rs.11.25ps. and collected the

same only into three plain, dry, orderless, cleaned glass bottles and sealed them in accordance with provisions of Rule 14 of Prevention of Food Adulteration Rules 1955 and thereby complied with Rule 14 of the Rules strictly? (ii) Whether the prosecution proves beyond doubt that sample chilly powder (loose) collected from the shop of the accused was unfit for human consumption and adulterated as under Section 2(1F) of the Act? (iii) Whether the prosecution proves beyond doubt that the accused have committed offence punishable under Section 16 of the PFA Act? (iv) What order. The learned Magistrate has answered issue Nos. 1 to 3 in negative and 4 as per his order. After discussing the material on record, the learned Magistrate has come to the conclusion that the prosecution has not proved the case against the accused and acquitted the accused of the charges punishable under Section 16 of the Act. This order is under challenge in this appeal.

3. Learned Addl P.P. has vehemently submitted that the order of acquittal dated 3.4.1996 is passed without appreciation of evidence on record and therefore, the same deserves to be quashed and set aside. He submitted that the report of the Public Analyst and report of the

Central Food Laboratory conclusively go to show that the sample food article was not only adulterated but also misbranded and therefore, the accused deserves to be convicted and visited with appropriate punishment. Learned Magistrate has erroneously come to the conclusion that there is a breach of Rule 14 of the Rules in collecting the sample. He has further submitted that the testimony of the Food Inspector original complainant go to show that he used orderless, dried and cleaned glass bottlers for collecting the sample food article and it was only the suggestion made in his cross examination by the defence that the bottles were not cleaned, this can therefore not be amounting to say that prosecution had failed in proving beyond doubt due compliance of Rule 14 of the Rules. Learned Addl.P.P. has further submitted that learned Magistrate has also erred in coming to the conclusion that discrepancy between the report of the Central Food Laboratory and that of Public Analyst has remained unexplained, in fact, the learned Magistrate ought not to have relied upon the report of the Public Analyst in view of the fact that report of the Central Food Laboratory is available on record. In view of this, the judgment has proceeded on wrong premise and therefore,

same deserves to be quashed and set aside and as the conclusive proof of adulteration and misbranded is in record in form of Central Food Laboratory, the accused deserves to be convicted and appropriate punishment deserves to be awarded.

4. Shri Modi, learned counsel appearing on behalf of present respondent original accused has submitted that the conclusion and finding of the acquittal in the impugned order dated 3.4.1996 deserves to be sustained by this court in this acquittal appeal. The accused respondents have right to make out a case for sustaining the acquittal order even on the grounds and reasoning different then the one relied upon by the learned trial Court. This proposition of Shri Modi cannot be controverted by learned Addl.P.P.. Shri Modi has submitted that learned Magistrate has nowhere put the facts and finding in the Central Food Laboratory report to the accused either at the time of recording plea or at the time of recording of further statement under Section 313 of the Code of Criminal Procedure. He has submitted that therefore, trial and prosecution case stands vitiated. The prosecution was duty bound to press into service the report of Central Food Laboratory and the accused were required to be

questioned on the same at the time of recording plea and at the time of taking further statement. This infirmity in the case of prosecution shall resulting into acquittal and the trial stands vitiated. Shri Modi has further submitted that the prosecution has failed in establishing beyond doubt the complete compliance of Rule 14 of the Rules. The Food Inspector had been accompanied by the helper. He has merely stated that he has used the clean bottles but he has nowhere stated that bottles were cleaned by himself or he had got the bottles cleaned by the helper. The helper has not been examined in the matter. In view of this, he submits that prosecution has failed in proving complete compliance of Rule 14 of the Rules beyond reasonable doubt and therefore, this infirmity will also go in favour of the accused and acquittal need not be disturbed at this stage. Shri Modi has strenuously urged that the infirmities in the report of the Central Food Laboratory shall also go in favour of the accused and in view of that also, the order of acquittal does not call for any interference in this acquittal appeal. Shri Modi has invited this court's attention to finding of the Central Food Laboratory, which is exhibited at Ex. 18 on the record. He submitted that the report

indicates that sample food article was termed to be adulterated or misbranded only on the account of report and finding at item No. 6, 8 and 12. In the report of the Central Food Laboratory, the item No. 6 shows the presence of the starch but the test for ascertaining starch is not indicated. Similarly, in respect of item No. 8, the finding is about presence of oil soluble coaltar colour but there also, the method of test is not indicated and he submitted that against item no. 12, it is clearly mention that on microscopy examination of the sample the presence of foreign starch structures identified and on his submission, the microscopy examination has not been held sufficient for such a conclusion by the various courts and therefore, this infirmity of the Central Food Laboratory should be sufficient to sustain the order of acquittal.

5. This court has heard the learned counsel for the parties and perused the documentary evidence on record. The record shows that the sample food article was examined by the Central Food Laboratory also and the report of Central Food Laboratory dated 19.11.1993 was also available on the record. The law in respect of the Central Food Laboratory is crystallized to the effect that when the report of the Central Food Laboratory is

available on record, the report of the public analyst looses its significance. It is time and again held by the Apex Court that when the report of the Central Food Laboratory is obtained, it is not open either to the prosecution or to the Court to fall back upon the report of the Public Analyst. Thus, in the instant case, the report of the Central Food Laboratory should have been the coma stone whereon the entire prosecution case was required to be built. Unfortunately, as it appears from the record that the trial Court has not confronted the accused with the finding of the Central Food Laboratory report at all. The trial Court has not put any question or drawn the attention of the accused to the fact of the Central Food Laboratory report, while recording the plea, which came to be recorded on 8.5.1995 nor had the accused been confronted with the finding and report of the Central Food Laboratory when their further statements were recorded under Section 313 of the Code of Criminal Procedure on 1.3.1996. This fact in its own is sufficient to render the case of prosecution vitiated. This would amount to denial of appropriate opportunity to the accused and hence, the prosecution case and the trial would stand vitiated.

6. The contention of Shri Modi that there is a failure on

the part of the prosecution in establishing complete compliance of Rule 14 of the Rules also deserve to be considered in view of the fact that helper, who had accompanied the complainant Food Inspector has not been examined nor has there been any positive evidence proving and establishing complete compliance with the requirement of mandatory provisions of Rule 14 of the Rules.

7. The contention of Shri Modi that even the report of the Central Food Laboratory cannot be treated to be conclusive proving the adulteration deserves consideration. Shri Modi has relied upon the decision of this Court rendered in Criminal Appeal No. 1060 of 1992 (Coram : Sharad D. Dave, J.) dated 17.10.2003, wherein the non mentioning of any method adopted for analysis had weighted with the court in sustaining the acquittal order. There also in that case, the question was that of artificial colouring method. Shri Modi has submitted that in the instant case also, the method of test adopted for recording the conclusion is conspicuously absent and to that extent, the report cannot be said to be a conclusive proof of adulteration or misbranding. Shri Modi has relied upon the judgment of this Court in Criminal Appeal No. 65 of 1984 with

Criminal Appeal No. 1030 of 1984 and other cognate matters delivered on 11.6.1993 by the Hon'ble court (Coral : B.C. Patel, J.), wherein, this court did not interfere with the order of the trial Court on the ground that the microscopy test carried for reporting starch was not proper test relying upon a ruling of the Apex Court in case of **JAGDISHCHANDRA VS. STATE OF UTTAR PRADESH**, reported in AIR 1981 SC 1233. Shri Modi has also relied upon the decision of the Apex Court in case of **BHIM SEN VS. THE STATE OF PUNJAB,** reported in 1948-1997 Supreme Court on Food Adulteration Cases p.189 in support of his submission the accused were required to be confronted with the finding and report of the Central Food Laboratory and failure on that count, would vitiate the trial and the prosecution case. He relied upon para 6 and 7 of the Apex Court judgment, which reads as under :-

> “para 6 : Before we part with this case, we must refer to one other contention urged on behalf of the respondent in a desperate attempt to sustain his conviction. That contention was that according to the certificate of the Director, Central Food Laboratory, which superseded the report of the

Public Analyst, the sample of ”aerated water” sold by the appellant contained non-permitted coal tar dye and consequently, it was adulterated and the appellant was rightly convicted for selling it.”

“para 7 : But the short answer to this contention is that it did not form the subject matter of the charge against the appellant nor was it put to him in his examination under Section 342 of the Code of Criminal Procedure, and it is, therefore, not open to the State to urge this ground for the first time at this stage in order to support the conviction.”

8. Thus, in view of the aforesaid discussion, this court is of the view that this being an acquittal appeal, the court though not in complete agreement with the reasoning of the learned trial Judge for acquittal, the order of acquittal need not call for any interference and therefore, the appeal fails.

9. For the foregoing reasons, this court is of the view that impugned order of acquittal dated 3.4.1996 in Criminal Case No. 434 of 1993 does not call for any interference in the present appeal and same is required

to be sustained. In the result, appeal deserves to be dismissed and same is accordingly dismissed.

(S.R.BRAHMBHATT, J.)

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